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10/799,397	03/12/2004	Soumya Roy	6357US	7319
30173	7590	01/03/2007	EXAMINER	
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			STULII, VERA	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,397	ROY ET AL.	
	<b>Examiner</b> Vera Stulii	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08/04/2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-56 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-56 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/16/04.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-5 and 20-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how the bakery product is produced by the dry mix/batter composition. Is product produced from the composition?

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Katz et al. (US 4,792,456).

Narayanaswamy et al. discloses a shelf-stable ready-to-bake batter article for baked goods (Abstract).

In regard to claim 1, Narayanaswamy et al. disclose dry ingredients for use in a batter such as flour (Col.2 line 44), leavening system (Col. 10, lines 9-8), and encapsulated acid (Col.10, line 10). Narayanaswamy et al. disclose batter comprising about 10 to 40% flour and about 5 to 30% moisture (Col. 3 lines 3, 5,11). Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system" (Col. 10 lines 7-8). Narayanaswamy et al. disclose "in a preferred method of preparation, a preblend of the dry ingredients is made" (Col. 10 lines 42-43). Narayanaswamy et al. also disclose that "For greater convenience and shelf stability, dry mixes for baked goods have long been available. The consumer mixes the dry mix with liquid ingredients such as water, milk, oil and/or eggs to form a batter. The batter is then immediately poured into a baking pan and baked to form the finished baked goods" (Col. 1 lines 24-29).

In regard to claims 2-4, Narayanaswamy et al. disclose that batter is shelf stable at room temperature for at least four months.

In regard to claims 5 and 17-18, Narayanaswamy et al. disclose "while the invention is specifically described in terms of improved baked goods, such as layer cakes, muffins, quick breads, cupcakes, biscuits, baked corn bread, the batters can be used for or formulated for use to prepare other cooked

farinaceous goods within the scope of this invention including griddle cakes such as pancakes, crepes or cornbread, Irish soda bread or waffles. Also, while the present articles are especially suited for use for preparing leavened finished goods, other finished goods can also be prepared therefrom" (Col. 8 lines 19-27).

In regard to claim 6, Narayanaswamy et al. disclose use of propionic acid (Col.14, Claim 26).

In regard to claim 7, Narayanaswamy et al. disclose use of about 20%-70% sugar (Col.3, line 4).

In regard to claim 8, Narayanaswamy et al. disclose use of about 1% to 25% of an edible fat or shortening (Col.5, lines 11-12).

In regard to claim 9, Narayanaswamy et al. disclose use of about 1% to 8% of emulsifiers (Col.6, lines 40-41).

In regard to claim 10, Narayanaswamy et al. disclose use of about 1% to 8% of a humectant (Col.7, lines 64-68).

In regard to claim 11, Narayanaswamy et al. disclose use of hydrophilic colloid (Col. 8, lines 51-58).

In regard to claim 12, Narayanaswamy et al. disclose use of starch (Col.2, line 46).

In regard to claim 13, Narayanaswamy et al. disclose use of non-fat dry milk solids (Col.9, lines 23-25).

In regard to claim 14, Narayanaswamy et al. disclose use of flavor agents (Col.9, lines 8-13).

In regard to claim 15, Narayanaswamy et al. disclose use of coloring agents (Col.9, lines 8-10).

In regard to claim 16, Narayanaswamy et al. disclose use of edible inclusions such as butterscotch, chocolate, peanut butter chips, etc (Col. 9, lines 11-13).

Narayanaswamy et al. do not disclose dry mix composition, particular amount of flour in dry mix composition, particular leavening acid used, particle size and amount of leavening acid, cake donuts as a bakery product, fried bakery product.

Katz et al. discloses encapsulated leavening acid coated with partially hydrogenated palm oil. (Col. 3 lines 16-18). Katz also discloses that "the coating melts and the material is in the form of a free flowing white powder of which a maximum of 2% retained on 10 mesh and a maximum of 10 % passes through 140 mesh" (Col.3 lines 19-22). Katz et al. discloses the leavening acid is encapsulated to "minimize premature reaction between the components" (Col. 6 claim 1).

It was well known in the art to use citric acid as a leavening acid. Since, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system", it would have been obvious to one of ordinary skill in the art to use citric acid as an appropriate leavening acid. It would also have been obvious to employ size particles of about 105 microns to about 2000 microns as discloses by Katz in order to "minimize premature reaction between the components". It would have been obvious to

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vary amount of acid depending on the amount of bicarbonate used in the leavening system. Since, Narayanaswamy et al. disclose preparing "other cooked farinaceous goods", it would have been obvious to one of ordinary skill in the art to modify invention of Narayanaswamy et al and prepare cake donuts or other fried bakery products. Since, Narayanaswamy et al. disclose making a "preblend of the dry ingredients", and greater shelf stability of dry mixes, it would have been obvious to form a dry mix blend with a higher shelf stability.

Claims 19-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524).

In regard to claim 19, Narayanaswamy et al. disclose dry ingredients for use in a batter such as flour (Col.2 line 44), leavening system (Col. 10, lines 9-8), and encapsulated acid (Col.10, line 10). Narayanaswamy et al. disclose batter comprising about 10 to 40% flour and about 5 to 30% moisture (Col. 3 lines 3, 5,11). Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system" (Col. 10 lines 7-8).

In regard to claims 20-22, Narayanaswamy et al. disclose that batter is shelf stable at room temperature for at least four months.

In regard to claim 23-24, Narayanaswamy et al. disclose "while the invention is specifically described in terms of improved baked goods, such as layer cakes, muffins, quick breads, cupcakes, biscuits, baked corn bread, the batters can be used for or formulated for use to prepare other cooked farinaceous goods within the scope of this invention including griddle cakes such

as pancakes, crepes or cornbread, Irish soda bread or waffles. Also, while the present articles are especially suited for use for preparing leavened finished goods, other finished goods can also be prepared therefrom" (Col. 8 lines 19-27).

In regard to claim 25, Narayanaswamy et al. disclose use of propionic acid (Col.14, Claim 26).

In regard to claim 26, Narayanaswamy et al. disclose use of about 1% to 25% of an edible fat or shortening (Col.5, lines 11-12).

In regard to claim 27, Narayanaswamy et al. disclose use of about 1% to 8% of emulsifiers (Col.6, lines 40-41).

In regard to claim 28, Narayanaswamy et al. disclose use of about 1% to 8% of a humectant (Col.7, lines 64-68).

In regard to claim 29, Narayanaswamy et al. disclose use of hydrophilic colloid (Col. 8, lines 51-58).

In regard to claim 30, Narayanaswamy et al. disclose use of starch (Col.2, line 46).

In regard to claim 31, Narayanaswamy et al. disclose use of non-fat dry milk solids (Col.9, lines 23-25).

In regard to claim 32, Narayanaswamy et al. disclose use of flavor agents (Col.9, lines 8-13).

In regard to claim 33, Narayanaswamy et al. disclose use of coloring agents (Col.9, lines 8-10).

In regard to claim 34, Narayanaswamy et al. disclose use of edible inclusions such as butterscotch, chocolate, peanut butter chips, etc (Col. 9, lines 11-13).

Narayanaswamy et al. do not disclose particular leavening acid used, amount of leavening acid, and fried bakery product.

It was well known in the art to use citric acid as a leavening acid. Since, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system", it would have been obvious to one of ordinary skill in the art to use citric acid as an appropriate leavening acid. It would have been obvious to vary amount of acid depending on the amount of bicarbonate used in the leavening system. Since, Narayanaswamy et al. disclose preparing "other cooked farinaceous goods", it would have been obvious to one of ordinary skill in the art to modify invention of Narayanaswamy et al and prepare cake donuts or other fried bakery products.

Claims 35-36 and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Willyard et al. (US 4,929,464) and Book et al. (US 6,149 960).

Narayanaswamy et al. is taken as cited above.

In regard to claim 35, Narayanaswamy et al. disclose providing about 10 to 40% flour (percentage of flour in the batter), a leavening system; and an encapsulated acid; forming a batter comprising flour, leavening system and about 5 to 30% moisture.

In regard to claims 36, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system" (Col. 10 lines 7-8).

Narayanaswamy et al. do not disclose particular leavening acid used, amount of leavening acid, depositing individual-serving size portions of said into heated oil, deep-frying the batter in oil, oil temperature, internal temperature, baking temperature and shelf life of fried/baked product.

Willyard et al. disclose fried donuts (Abstract), forming batter into a desired individual-serving size portions e.g. donuts (Col.3, lines 57-58), and immersing them in heated oil (Col.4, lines 12-14). Willyard et al. also disclose deep-frying such individual-serving size portions in oil having temperature of 350°F (Col.4, line 28). Willyard et al. also disclose internal temperature of 150°F (Col.4, lines 48-50).

Book et al. disclose chemically leavened dry mix, dough and bakery product and use of fumaric acid as a leavening acid (Col. 14, Claim 13). Book et al. disclose adding shelf life extenders (Col.6, lines 45-46). Book et al. discloses that "the level of carbonate factor dictates the level of each leavening acid component required. The amount of leavening acid necessary is calculated based upon the theoretical neutralizing value for that leavening acid. Book et al. disclose that the dough may be used for variety of baked products including doughnuts (Col.4, line 29).

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Since, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system", and Book et al. disclose use of fumaric acid as a leavening acid, it would have been obvious to one of ordinary skill in the art to modify disclosure of Narayanaswamy and to use fumaric acid as an appropriate leavening acid. It would have been obvious to vary amount of acid depending on the amount of bicarbonate used in the leavening system. Since, Narayanaswamy et al. disclose preparing "other cooked farinaceous goods", and Willyard et al. disclose deep-frying individual-serving size portions in oil having temperature of 350°F with internal temperature of 150°F, it would have been obvious to one of ordinary skill in the art to modify disclosure of Narayanaswamy and employ method steps discloses by Willard et al in order to produce desired fried bakery products. It would also have been obvious to use shelf-life extender as taught by Book et al in order to achieve desired life-shelf stability of fried bakery product.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Willyard et al. (US 4,929,464) and Book et al. (US 6,149 960), further in view of Katz et al. (US 4,792,456)..

Narayanaswamy, Willyard et al., and Book et al are taken as cited above.

Narayanaswamy, Willyard et al., and Book et al do not disclose leavening acid particle size.

Katz et al. discloses encapsulated leavening acid coated with partially hydrogenated palm oil. (Col. 3 lines 16-18). Katz also discloses that "the coating melts and the material is in the form of a free flowing white powder of which a

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maximum of 2% retained on 10 mesh and a maximum of 10 % passes through 140 mesh" (Col.3 lines 19-22). Katz et al. discloses the leavening acid is encapsulated to "minimize premature reaction between the components" (Col. 6 claim 1).

Since, Narayanaswamy et al. disclose Narayanaswamy et al. disclose chemical leavening system (Col. 2, lines 57-58), it would have been obvious to employ size particles of about 105 microns to about 2000 microns as discloses by Katz in order to "minimize premature reaction between the components".

Claims 46-47 and 49-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Book et al. (US 6,149 960)

Narayanaswamy et al. is taken as cited above.

In regard to claim 46, Narayanaswamy et al. disclose providing about 10 to 40% flour (percentage of flour in the batter), a leavening system; and an encapsulated acid; forming a batter comprising flour, leavening system and about 5 to 30% moisture.

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In regard to claims 47, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system" (Col. 10 lines 7-8).

Narayanaswamy et al. disclose ready-to-bake batter (Abstract).

Narayanaswamy et al. disclose use of moisture in batter (Col.3, line 11).

Narayanaswamy et al. disclose depositing batter in a baking container (Col.3, lines 48-54).

Narayanaswamy et al. disclose chemical leavening system (Col. 2, lines 57-58).

Narayanaswamy et al. do not disclose particular leavening acid used, amount of acid, baking temperature, internal cooked temperature, and shelf life of baked products.

Book et al. disclose chemically leavened dry mix, dough and bakery product and use of fumaric acid as a leavening acid (Col. 14, Claim 13). Book et al. disclose adding shelf life extenders (Col.6, lines 45-46). Book et al. discloses that "the level of carbonate factor dictates the level of each leavening acid component required. The amount of leavening acid necessary is calculated based upon the theoretical neutralizing value for that leavening acid. Book et al. disclose that the dough may be used for variety of baked products including doughnuts (Col.4, line 29). Book et al. also discloses baking at 218°C.

Since, Narayanaswamy et al. disclose that "the batters herein preferably further comprise only conventional Chemical leavening system", and Book et al. disclose use of fumaric acid as a leavening acid, it would have been obvious to

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one of ordinary skill in the art to modify disclosure of Narayanaswamy and to use fumaric acid as an appropriate leavening acid. It would have been obvious to vary amount of acid depending on the amount of bicarbonate used in the leavening system. Since Narayanaswamy et al. disclose batter for baked goods, such as layer cakes, muffins, quick breads, cupcakes, biscuits, baked corn, etc., and Book et al. also discloses baking at 218°C, it would have been obvious to the ordinary skill in the art to modify disclosure of Narayanaswamy et al and vary baking temperature discloses by Book et al in order to produce a baked product of improved quality depending on desired internal cooking temperature.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al. (US 6,165,524) in view of Book et al. (US 6,149 960), further in view of Katz et al. (US 4,792,456).

Narayanaswamy and Book et al are taken as cited above.

Narayanaswamy and Book et al do not disclose leavening acid particle size.

Katz et al. discloses encapsulated leavening acid coated with partially hydrogenated palm oil. (Col. 3 lines 16-18). Katz also discloses that "the coating melts and the material is in the form of a free flowing white powder of which a maximum of 2% retained on 10 mesh and a maximum of 10 % passes through 140 mesh" (Col.3 lines 19-22). Katz et al. discloses the leavening acid is encapsulated to "minimize premature reaction between the components" (Col. 6 claim 1).

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Since, Narayanaswamy et al. disclose that Narayanaswamy et al. disclose chemical leavening system (Col. 2, lines 57-58), it would have been obvious to employ size particles of about 105 microns to about 2000 microns as discloses by Katz in order to "minimize premature reaction between the components".

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

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